

# NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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### NAHMA Submits Comments on Violence Against Women Act, 2013 Implementation

#### **Background**

The Violence Against Women Act (VAWA) is a federal law designed to strengthen and improve existing programs that assist victims of domestic violence, dating violence, sexual assault, and stalking. VAWA was originally passed in 1994 as a section of the Violent Crime Control and Law Enforcement Act. The 1994 version of VAWA was passed with bipartisan support and was reauthorized in 2000 and again in 2005. The 2005 reauthorization provided more robust housing protections and officially made it unlawful to deny an individual Section 8 housing assistance because she is a victim of domestic/dating violence.

VAWA expired in September of 2011 and was set to be reauthorized again in early 2012. Attempts to reauthorize VAWA stalled in 2012, but in the beginning of 2013, then Senate Majority Leader Patrick Leahy (D-VT) introduced the Violence Against Women Reauthorization Act of 2013. Though there was initial conflict over the legislation's expanded protections, the bill passed with bipartisan support in both chambers of Congress. The 2013 reauthorization was signed into law on March 7, 2013.

VAWA 2013 specifically extends housing protections to survivors of sexual assault, and adds "intimate partner" to the list of eligible relationships in the domestic violence definition. Protections also now cover an "affiliated individual," which includes any person living with the survivor and related to him or her by blood or marriage including the survivor's spouse, parent, brother, sister, or child.

Coupled with the new protections for previously underserved populations, the 2013 reauthorization expands VAWA's applicability to additional affordable housing programs. Under the 2005 reauthorization, VAWA was applicable to only project-based and tenant-based Section 8 rental assistance properties (and to public housing). VAWA 2013 expanded the list to which assistance applies, including to the USDA's Rural Development multifamily housing programs and properties that use the Low-Income Housing Tax Credit (LIHTC). Below is a list of all housing programs that are now subject to the protections provided under VAWA:

- Section 202, Supportive Housing for the Elderly
- Section 811, Supportive Housing for Persons With Disabilities
- Project-Based Section 8
- Tenant-Based Section 8 (Housing Choice Vouchers)

- Housing Opportunities for Persons With AIDS (HOPWA)
- Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act
- HOME Investment Partnerships
- Section 221(d) of the National Housing Act
- Federal Housing Administration (FHA) Mortgage Insurance (Including Section 236)
- Low-Income Housing Tax Credit (LIHTC)
- Rural Housing Programs, including sections 514, 515, 516, 533, and 538
- Public Housing

VAWA 2013 continues to bar eviction and termination due to a tenant's status as a survivor, and it requires landlords to maintain survivor-tenant confidentiality. It also continues to prohibit a tenant who is a survivor of domestic violence from being denied assistance, tenancy, or occupancy rights based solely on criminal activity related to an act of domestic violence committed against them. It continues to allow a lease bifurcation so a tenant or lawful occupant who engages in criminal acts of physical violence against affiliated individuals or others may be evicted or removed without evicting or removing or otherwise penalizing a victim who is a tenant or lawful occupant. If victim cannot establish eligibility, the landlord must give a reasonable amount of time to find new housing or establish eligibility under another covered housing program.

Because programs under Section 8 already had VAWA regulations in place, HUD stated then that compliance with the VAWA 2013 requirements would be easier for public housing authorities (PHAs) and owners and agencies (O/As) participating in these programs. However, the 2013 reauthorization contained new notification and emergency transfer requirements for PHAs and O/As. While NAHMA agrees that tenants should have easy access to information on their rights under VAWA, we were concerned about the increased notification requirements and emergency transfer policies for victims under the 2013 reauthorization.

### **NAHMA Comments and Industry Letter**

On October 7, 2013, NAHMA signed on to an industry letter regarding a notice entitled "The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs" [Docket Number: FR-5720-N-01]. This notice requested comments on prospective guidance and regulations in anticipation of the law's implementation. In these industry comments, NAHMA and other groups recommended that the implementing guidance and forms should reflect the ability for housing providers to require third-party certification when there is not clear evidence that domestic violence occurred, or in situations wherein there are question about who is a victim and who is the perpetrator. Additionally, this letter emphasized that model emergency transfer plan must recognize the differing characteristics, roles and capabilities of various housing providers and property types.

Then on April 1, 2015, HUD published the proposed rule to implement the reauthorized VAWA regulations as "The Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs" [Docket Number: FR-5720-P-02, RIN 2501-AD71]. NAHMA forwarded a summary to all members which reviewed the proposed rule, and we requested comments on the key questions identified in the summary. Specifically, NAHMA sought comments on the draft Notice of Occupancy Rights and the Emergency Transfer Plan as O/As will be required to incorporate both documents.

For the draft Notice of Occupancy Rights, HUD stated that it was considering a requirement that the newly covered HUD programs distribute the notice of occupancy rights and certification form to all *current* tenants, not only to new tenants (i.e., at the time an individual is provided assistance or admission under the covered housing program). HUD asked whether there is a less burdensome way to reach out to all existing tenants in the newly covered HUD programs about their rights under VAWA.

For Emergency Transfers, the proposed rule solicited comments on available and safe dwelling units that a covered housing provider is required to consider in transferring a tenant, who expressly requests a transfer as a result of an incident of domestic violence, dating violence, sexual assault, or stalking. Additionally, HUD sought comments on the costs of such transfer (including information on who bears the costs of the transfer) and the paperwork involved for both covered housing providers that have been involved and have not been involved in a transfer of tenants from one unit to another.

In our [comments](#), NAHMA outlined specific recommendations on Emergency Transfers, Notice of Occupancy Rights, the impact on small entities, definitions found in the proposed rule, and confidentiality. These comments reference specific line items from the proposed rule as it was published in the *Federal Register*. For more context on the specific references made in our comments, please click [here](#) to view the proposed rule in its entirety.

While developing our comments in consultation with our Regulatory Affairs Committee members, NAHMA also participated in group discussions with other organizations involved in federally-assisted multifamily housing. Our coalition of organizations compiled a consolidated set of comments in a [letter](#) to HUD, which highlight many of the items recommended in NAHMA's own comments.

## **Conclusion**

NAHMA firmly supports the mission of the Violence Against Women Act. We are more than willing to continue collaboration with federal agencies to improve housing protections for victims of domestic violence while also ensuring that the practical concerns of housing providers are addressed. In order to improve these services, NAHMA believes that HUD should provide additional guidance where necessary (and requested) so that O/As can be most effective in protecting tenants.

With this proposed rule, the new regulations and policies within the 2013 reauthorization of VAWA are still not fully implemented. Later, HUD will issue a final rule which will officially implement VAWA over the covered programs mentioned in this NAHMA analysis.